Nos. 71-1016 and 71-1040

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1971

FEDERAL POWER COMMISSION,
Petitioner,

v.

LOUISIANA POWER & LIGHT COMPANY, *et al.*,
(The Collateral Proceeding)
Respondents.

FEDERAL POWER COMMISSION,
Petitioner,

v.

LOUISIANA POWER & LIGHT COMPANY, *et al.*,
(The Curtailment Proceeding)
Respondents.

UNITED GAS PIPE LINE CO. and PENNZOIL UNITED, INC.,
Petitioner,

v.

LOUISIANA POWER & LIGHT CO.,
Respondent.

UNITED GAS PIPE LINE CO.,
Petitioners,

v.

LOUISIANA POWER & LIGHT CO., *et al.*,
(FPC Opinion 606)
Respondents.

RESPONSE OF THE BROOKLYN UNION GAS COMPANY IN SUPPORT OF MOTION FOR EXPEDITED CONSIDERATION AND PETITIONS FOR WRITS OF CERTIORARI

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The Brooklyn Union Gas Company (Brooklyn Union) supports the Motion for Expedited Consideration and the Petitions for Writs of Certiorari which have been filed in the captioned cases.

Interest of Brooklyn Union

Brooklyn Union is a gas utility company engaged solely in the distribution of gas at retail, primarily to domestic customers, hospitals, schools, and small businesses in a service area encompassing approximately one-half of the City of New York. Some 4,000,000 persons are dependent upon this Company for gas for heating, cooking and other essential uses.

Brooklyn Union obtains its entire gas supply from three interstate pipeline companies whose facilities originate in the State of Louisiana or other southwestern areas. A substantial portion of this supply is purchased by Brooklyn Union from Texas Eastern Transmission Corporation (Texas Eastern). Texas Eastern, in turn, obtains a substantial portion of its gas supply directly or indirectly from United Gas Pipe Line Company (United), the pipeline whose curtailment practices are in issue in the proceedings of which review is here sought.

Because of curtailments by United to Texas Eastern, Texas Eastern for some time has been curtailing gas deliveries to Brooklyn Union below contracted-for delivery volumes. As a direct result of the Texas Eastern curtailments (and curtailments by another Brooklyn Union pipeline supplier) this Company has been compelled to limit

the availability of gas service in its franchise territory in New York City. *New York Gas Supply Case,* 11 NY PSC —— (Order issued October 26, 1971). In addition, Brooklyn Union's ability to assure continued rendition of safe and adequate service to existing ultimate consumers of gas has been jeopardized. Unless the FPC's regulatory jurisdiction over *all* curtailment practices of interstate pipelines is promptly affirmed (in the Curtailment Proceeding) and the Fifth Circuit's denial of that jurisdiction with respect to direct sales is promptly reversed (in the Collateral Proceeding), the integrity of gas service to Brooklyn Union's customers will be further and seriously imperilled.

In order to protect its interests and the interests of its customers in an equitable allocation of scarce natural gas resources, Brooklyn Union intervened and was an active participant in the Curtailment Proceeding before the FPC and has intervened in support of the Commission decision (Opinion 606) in the pending Fifth Circuit cases in which review of that decision is sought.[1]

Argument

Brooklyn Union concurs in the arguments in support of the Motion for Expedited Consideration and the Petitions for Writs of Certiorari therein and in the Memorandum in Support of the Motion and Petitions submitted by the Public Service Commission for the State of New York. These persuasively detail many of the vital public interest

1. Brooklyn Union's intervention in the FPC proceeding was granted by Commission order issued March 10, 1971. Brooklyn Union's intervention in each of the cases in which review of FPC Opinion 606 is sought in the Fifth Circuit was granted on February 16, 1972.

considerations requiring immediate review of the FPC's Opinion Numbers 606 and 606A and the decision of the Fifth Circuit in the Collateral Proceeding.

The decision of the Fifth Circuit in the collateral proceeding represents a practical reversal of the FPC's determinations of jurisdiction in Opinions 606 and 606A, and is in direct conflict with prior decisions of this Court and other federal courts on the same or similar issues. *Federal Power Commission* v. *Transcontinental Gas Corp.*, 365 U.S. 1 (1960); *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission of Indiana*, 332 U.S. 507 (1947); *Atlanta Gas Light Co.* v. *Southern Natural Gas Co.*, Civ. No. 16060 (D. Ga., Order dated February 11, 1972); *Texas Gulf Sulphur Co.* v. *United Gas Pipe Line Co.*, Civ. No. 2253-71 (D.D.C., January 21, 1972).

The Fifth Circuit's decision would relegate to local courts or agencies disputes concerning the allocation of scarce natural gas supplies between consumers in numerous states. That decision was made without any meaningful analysis of the ability of such local authorities to protect the interests of all the consumers affected, although such analysis has been stated by this Court to be a *sine qua non* to any judicial determination of the FPC's authority over direct sales. 365 U.S. 1, 22-23; See also, La. Const., Art. 6, §4. In this respect, the Fifth Circuit completely ignored the broad remedial purposes of the Natural Gas Act (See 365 U.S. 1, 19-20) and its decision has raised issues of vital importance in the administration of this statute requiring review by this Court. *Wisconsin* v. *Federal Power Commission*, 373 U.S. 294, reh. den. U.S. 870

(1963); *Atlantic Refining Co. v. Public Service Commission of New York*, 360 U.S. 378, amdt. den. 361 U.S. 801 (1959); *United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division*, 358 U.S. 103, reh. den. 358 U.S. 942 (1958).

If the Fifth Circuit decision is allowed to stand, its application to other direct industrial sales by United and other interstate pipelines lacking adequate supplies to meet in full all contractual commitments will have an immediate, widespread, and disastrous effect on service to the ultimate gas consumer. Appendix I to the Petitions of the FPC indicates the extent, but not the gravity, of the problem.

Like many other gas distributors, Brooklyn Union is now experiencing continuing substantial reductions in its available gas supply, as a result of curtailment of deliveries to the interstate market by United and other interstate pipelines. Appendix H to the Petitions of the FPC. The present level of these curtailments has raised a real danger of shut-down of entire sections of Brooklyn Union's distribution system. Such shut-downs, if they become necessary, will deprive numerous domestic, commercial, and industrial customers of gas service for heating, cooking, and other uses (R. 5667-68),[2] will create a risk of injury to life and property and will entail enormous costs for restoration of service. While the impact of pipeline curtailments may vary somewhat from company to company, the record in the Curtailment Proceeding makes it clear that adequate gas service to ultimate consumers in many states is similarly threatened. The Fifth Circuit's determination in the Collateral Proceeding, which effectively exempts direct in-

2. This reference is to the record in the Curtailment Proceeding, as certified to the Fifth Circuit.

dustrial customers of regulated pipelines from uniform curtailment procedures approved by the FPC, necessarily increases the threat of widespread service disruptions, since curtailing pipelines cannot make full deliveries to their direct industrial customers without further reducing deliveries to their resale customers who serve the needs of domestic and other ultimate gas consumers in many states.

The threat to the integrity of gas service to ultimate consumers engendered by the Fifth Circuit's decision in the Collateral Proceeding illustrates the need for prompt settlement by this Court of the interrelated questions presented by the petitions in these cases. Moreover, resolution of crucial issues relating to the scope of the FPC's jurisdiction under the Natural Gas Act to effectively safeguard the interests of ultimate gas consumers should not be undertaken without the benefit of the full administrative record in the Curtailment Proceeding. That record is indispensable for consideration of the question of adequacy of regulatory protection of the public interest essential to the determination of the FPC's jurisdiction in these cases.

The procedural status and importance of these cases make it clear that only this Court can finally and adequately resolve the questions presented, which are critical to the basic welfare and interests of all gas consumers. Delaying consideration of these questions to await decision by the Fifth Circuit in the Curtailment Proceeding would amount to an empty formality in light of that court's decision in the Collateral Proceeding. In view of the public interest in an expedited disposition of these cases, this Court should dispense with that formality. See *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952).

Conclusion

For the foregoing reasons, Brooklyn Union strongly supports the Motion for Expedited Consideration and the Petitions for Writs of Certiorari, and urges that they be promptly granted.

Respectfully submitted,

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February, 1972